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THE GENERAL STATUTES OF NORTH CAROLINA OF 1943

1945 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department of
Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
A. HEWSON MICHIE, CHAS. W. SUBLETT AND
BEIRNE STEDMAN

Volume IV

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THE GENERAL STATISTICS OF
THE NORTH CAROLINA
OF 1943

1943

THE CUMULATIVE SUPPLEMENT

1943

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The General Statutes of North Carolina 1943
1945 Cumulative Supplement

Volume IV

1. Rules of Practice in the Supreme Court and
Superior Courts of North Carolina

Preface

This Cumulative Supplement contains the general laws of a permanent nature enacted at the 1945 Session of the General Assembly, and brings to date the annotations included in the General Statutes of North Carolina of 1943.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. The index is confined to new laws and such amendatory laws as are not reflected in the original index. In addition, a supplemental index enlarges the treatment of certain topics found in the General Statutes.

In the appendix to this volume are set out certain constitutional amendments adopted at the general election held on November 7, 1944.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

CHAS. W. SUBLETT,
Editor in Chief.

January 15, 1946.

Scope of Publication

Constitution:

Amendments to the Constitution of North Carolina made or proposed since the publication of the General Statutes.

Statutes:

Permanent portions of the general laws enacted at the 1945 Session of the General Assembly.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 223-225 (p. 436).

Federal Reporter 2nd Series volumes 134 (p. 417)-149.

Federal Supplement volumes 49 (p. 225)-60.

United States Reports volumes 318-324.

Supreme Court Reporter volumes 63 (p. 862)-65.

North Carolina Law Review volumes 22 (p. 280)-23 (p. 281).

The General Statutes of North Carolina 1943 1945 Cumulative Supplement

Volume IV

I. Rules of Practice in the Supreme Court and Superior Courts of North Carolina

(1) RULES OF PRACTICE IN THE SUPREME COURT OF NORTH CAROLINA.

17. Appeal Dismissed for Failure to Docket in Time.

Right of Appellee.—

In accord with 3rd paragraph in original. See *State v. Buchanan*, 224 N. C. 626, 31 S. E. (2d) 774; *State v. Brooks*, 224 N. C. 627, 31 S. E. (2d) 754; *State v. Alexander*, 224 N. C. 478, 31 S. E. (2d) 357; *State v. Taylor*, 224 N. C. 479, 31 S. E. (2d) 367.

Certiorari to Preserve Right of Appeal.—Where appellant fails to file his case on appeal fourteen days before the call of the district to which it belongs, he may apply for certiorari to preserve his right of appeal and appellees' motion filed thereafter to docket and dismiss under this rule will be denied. *State v. Jones*, 225 N. C. 363, 34 S. E. (2d) 202.

When Motion Allowed in Capital Case.—In a capital case, where the time for bringing up the case on appeal has expired, in the absence of any apparent error in the record before the court, the motion of the attorney-general to docket and dismiss, under this rule, is allowed. *State v. Poole*, 223 N. C. 394, 26 S. E. (2d) 858.

19. Transcripts.

(3) Exceptions Grouped.

Appeal from Death Sentence.—In *State v. Thompson*, 224 N. C. 661, 665, 32 S. E. (2d) 24, although the assignments of error appearing on the record were not brought forward and grouped in accordance with the requirements of this rule, since defendants had been sentenced to death, the supreme court considered the appeal on its merits.

Exceptions to Rulings Granting New Trial, etc.—

In *Watkins v. Grier*, 224 N. C. 334, 338, 30 S. E. (2d) 219, it was held that any confusion there was in the transcript of the case on appeal to the Supreme Court, arose upon the merging of the proceedings in the trial in the municipal court with the proceedings had on appeal to Superior Court, without separate grouping of exceptions presented on such appeal. See also, *Watkins v. Grier*, 224 N. C. 339, 30 S. E. (2d) 223.

Cited in *Curlee v. Scales*, 223 N. C. 788, 28 S. E. (2d) 576.

21. Exceptions. (See also, Rule 19(3).)

I. EXCEPTIONS.

Applied in *State v. Ham*, 224 N. C. 128, 29 S. E. (2d) 449.

Cited in *Curlee v. Scales*, 223 N. C. 788, 28 S. E. (2d) 576; *State v. Scoggins*, 225 N. C. 71, 73, 33 S. E. (2d) 473.

II. CORROBORATIVE AND CONTRADICTIONARY EVIDENCE.

When Evidence Competent for Some Purposes, etc.—

Where evidence, admissible only for the purpose of attacking the credibility of a witness, is admitted generally without objection, there is no error in the court's failure to so restrict its use. *State v. McKinnon*, 223 N. C. 160, 25 S. E. (2d) 606.

28. Appellant's Brief.

Exceptions Not Discussed Deemed Abandoned.—

In accord with 5th paragraph in original. See *State v. Hill*, 225 N. C. 74, 33 S. E. (2d) 470; *State v. Britt*, 225 N. C. 364, 34 S. E. (2d) 408; *Troitino v. Goodman*, 225 N. C. 406, 35 S. E. (2d) 277.

Exceptions not set out in defendants' brief are considered abandoned. *State v. Thompson*, 224 N. C. 661, 664, 32 S. E. (2d) 24.

Exceptions not argued or referred to in appellant's brief are deemed abandoned. *State v. Smith*, 223 N. C. 457, 27 S. E. (2d) 114; *State v. Epps*, 223 N. C. 740, 28 S. E. (2d) 219.

Exceptions not discussed in appellant's brief are deemed abandoned. *Gillis v. Great Atlantic, etc., Tea Co.*, 223 N. C. 470, 27 S. E. (2d) 283; *Merchant v. Lassiter*, 224 N. C. 343, 30 S. E. (2d) 217.

Assignments of error, without reason, argument, or authority in the brief to support them, will not be considered on appeal. *Hopkins v. Colonial Stores*, 224 N. C. 137, 29 S. E. (2d) 455.

Exceptions set out in the record, and not preserved as required by this rule, are to be considered as abandoned. *Higgins v. Higgins*, 223 N. C. 453, 455, 27 S. E. (2d) 128.

Exceptions referred to in defendants' brief as "formal exceptions" and as to which no argument is made and no authority cited are deemed abandoned. *State v. Hunt*, 223 N. C. 173, 25 S. E. (2d) 598.

Where an exception is carried forward in appellants' brief, but no reason or argument is stated or authority cited in support thereof, as required by this rule, the exception is taken as abandoned. *Wingler v. Miller*, 223 N. C. 15, 19, 25 S. E. (2d) 160.

Exception Too General.—An exception simply to the general failure of the judge to state in a plain and correct manner the evidence and declare and explain the law arising thereon is too general and cannot be sustained. *Ellis v. Wellons*, 224 N. C. 269, 272, 29 S. E. (2d) 884.

Applied in *State v. McMahan*, 224 N. C. 476, 31 S. E. (2d) 357; *Bailey v. Inman*, 224 N. C. 571, 31 S. E. (2d) 769; *Whitehurst v. FCX Fruit, etc., Service*, 224 N. C. 628, 32 S. E. (2d) 34; *State v. Biggs*, 224 N. C. 722, 728, 32 S. E. (2d) 352.

Cited in *Curlee v. Scales*, 223 N. C. 788, 28 S. E. (2d) 576; *State v. Friddle*, 225 N. C. 240, 34 S. E. (2d) 5; *State v. Murdock*, 225 N. C. 224, 34 S. E. (2d) 69; *State v. Gordon*, 225 N. C. 241, 34 S. E. (2d) 414.

44. Petition to Rehear.

(6) When Petition Docketed for Rehearing.

When Petitions Will Be Dismissed.—Petitions to rehear will be dismissed where the grounds of error assigned are substantially the same as on the former hearing, and no new facts appear, no new authorities cited, and no new positions assumed. *Montgomery v. Blades*, 223 N. C. 331, 26 S. E. (2d) 567.

VIII. Comparative Tables

(1) TABLE OF COMPARATIVE SECTIONS.

(On page 70 of original, top of second column, the reference to "217(7) . . . 84-21" should read "215(7) . . . 84-21."

(3) TABLE OF LAWS CODIFIED SUBSEQUENT TO 1919.

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3	1	142-50 to 142-54	89	1-3	130-57.01 to	194	33-49.1
5	105-278			130-57.03	196	1-8	44-77 to 44-84
6	1, 2	47-2, 47-2.1	90	61-1 note	196	10	44-85
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43	3	108-12.1	127	1	53-48	242	2	20-118
44	43-17.1	127	2	53-143	244	153-9
45	147-15	127	3	36-29	247	1, 2	105-388
46	28-149	132	153-8	247	3	105-345
47	108-11	136	67-13	254	14-333
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61	106-451.1	142	7-65			81-18
66	7-70	143	7-70	280	2	81-16 Repealed
72	1	111-28.1	144	143-129	280	2	81-21 Repealed
72	2	111-27.1	145	143-59	280	2	81-24 Repealed
72	3	111-8.1	149	47-108.2	280	2	81-67 to 81-70
72	4	111-30	150	7-134			Repealed
73	1-3	30-7 to 30-9	151	153-152	280	2	106-203 to
73	4-6	39-7 to 39-9	152	28-68			106-209 Repealed
73	7	39-11	153	1-8	7-54 to 7-61	280	3	81-15.1
73	8	45-3	154	1-246	281	130-1
73	9	47-3	155	48-7	282	1-4½	53-164 to 53-168
73	10	47-7	157	164-12 to 164-19	283	53-141
73	11, 12	47-12, 47-13	158	1-100	284	115-361.1
73	13-15	47-38 to 47-40	159	147-77	286	1-7	153-9.1 to 153-9.7
73	16	52-2	160	1, 2	2-52, 2-53	287	106-40, 106-47
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327	153-38			58-27, 58-27.1			153-142.6½,
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351	2	65-36			58-182 to			153-142.16,
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		58-163 Repealed,			58-86.1, 58-88,	497	1, 2	115-309, 115-310
		58-165 Repealed,			58-92, 58-94 to	504	1-10	131-127 to
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		58-176 to			58-102 Repealed,	506	1-22	131-28.1 to
		58-178.1, 58-179			58-107, 58-109,			131-28.22
		Repealed,			58-110, 58-112.1,	516	1-6	131-28.23 to
		58-180.1, 58-181			58-134.1, 58-139,			131-28.28
		Repealed			58-143, 58-148,	520	29-1
379	58-151.1, 58-195,			58-164, 58-194,	521	115-351
		58-195.1, 58-200			58-315 note	522	1-3	96-4
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		58-201 to	401	160-77	522	5-10	96-8
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		58-221 Repealed,	414	2	20-89	522	33	96-16
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		to 58-340	426	2	33-33			106-236
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380	58-125 to	426	5, 6	35-14, 35-15			113-135 note
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Appendix

Constitutional Amendments

Adopted at General Election on November 7, 1944

Article III.

§ 1. Officers of the executive department; terms of office.—The executive department shall consist of a Governor, in whom shall be vested the supreme executive power of the State; a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance, who shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election, and continue until their successors are elected and qualified: Provided, that the officers first elected shall assume the duties of their office ten days after the approval of this Constitution by the Congress of the United States, and shall hold their offices four years from and after the first day of January. (1943, c. 57.)

§ 11. Duties of the lieutenant-governor.—The Lieutenant-Governor shall be president of the Senate but shall have no vote unless the Senate be equally divided. He shall receive such compensation as shall be fixed by the General Assembly. (1943, c. 497.)

§ 13. Duties of other executive officers.—The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance shall be prescribed by law. If the office of any of said officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the un-

expired term fixed in the first section of this article. (1943, c. 57.)

§ 14. Council of state.—The Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor and Commissioner of Insurance shall constitute, ex officio, the Council of State, who shall advise the Governor in the execution of his office, and three of whom shall constitute a quorum; their advice and proceedings in this capacity shall be entered in a journal, to be kept for this purpose, exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such journal shall be placed before the General Assembly when called for by either house. The Attorney General shall be, ex officio, the legal adviser of the executive department. (1943, c. 57.)

Article IX.

§ 8. State Board of Education.

See Vol. 1 Cumulative Supplement, p. 7.

Article X.

§ 8. How deed for homestead may be made.—Nothing contained in the foregoing sections of this article shall operate to prevent the owner of a homestead from disposing of the same by deed; but no deed made by the owner of a homestead shall be valid without the signature and acknowledgment of his wife. (1943, c. 662.)

Article XIV.

§ 7. Holding office.—No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes. (1943, c. 432.)

Errata

§ 20-64. Transfer of registration plates.

Editor's Note.—The reference to the 1945 act in the historical citation should read "1945, c. 576, s. 1."

§ 34-10. Guardian's accounts to be filed; hearing on accounts.

If objections are raised to such an accounting, the court shall fix a time and place for the hearing thereon not less than fifteen days nor more than thirty days from the date of filing such objections, and notice shall be given by the court

to the aforesaid bureau office and the North Carolina veterans commission by mail not less than fifteen days prior to the date fixed for the hearing.

(1945, c. 723, s. 2.)

Editor's Note.—

The 1945 amendment substituted in the next to the last sentence of this section the words "the North Carolina veterans commission" for the words "state service officer." As only this sentence was affected by the amendment the rest of the section is not set out.

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